IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.17 OF 2005

M/s.Veetrag Investment & Finance Company : Petitioner

V/s.

Mr.Abdul Gaffar Siddick Khatri & Ors. : Respondents

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Mr.Vineet B. Naik with Mr.V.N.Kantawala i/b.M/s.Kantawala & Co., for the petitioner.

Mr.A.N.Nasikwala for respondent no.1.

Mr.M.L.Palav i/b. M.K. Khatri & Co., for respondent no.2.

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CORAM : S.A. BOBDE, J.

June 14, 2005.

P.C.:

1. Rule.

Mr.Nasikwala for respondent no.1 and Mr.Palav for respondent no.2 appear and waive service of rule.

Rule is made returnable forthwith and heard by consent of parties.

2. The petitioner has challenged the order dated 24.11.2004 refusing to accept the written statement of the petitioner under the amended Order VIII. Summons was

served on the petitioner on 29.10.2002. The amended plaint was served on the petitioner on 10.7.2003.

3. Notwithstanding the passage of two years, the petitioner did not file its written statement. In the circumstances, the Court directed on 14.9.2004 to proceed ex parte against the petitioner.

4. Mr.Naik, learned counsel for the petitioner, strenuously urged that the petitioner's written statement ought to have been accepted in view of the fact that the interlocutory proceedings were terminated sometime on 14.9.2004. This does not appear to be the reason canvassed before the trial Court nor is it of much significance. The contention before the trial Court was that the petitioner was occupied in other litigation and injunction notices and, therefore, could not give time to this litigation. Vide para 8 of the impugned order, the trial Court has considered this to be an act of negligence on the part of the petitioner. It appears that the petitioner relied on the decision of a Division Bench of this Court in Chintaman Sukhdeo v. Shivaji Bhausaheb (2004 (4) Mh.L.J. 739) wherein this Court held that the time limit prescribed in Order VIII Rule 1 in filing the written statement cannot be considered as mandatory and

that this Court has the power to accept the written statement under Order VIII Rule 9 in exceptional cases and for reasons to be recorded in writing and not as a matter of right. It has been contended on behalf of the petitioner that there are exceptional circumstances such as the fact that the petitioner has obtained attachment in respect of respondent no.3's property and respondent nos.2 and 3 have both not filed written statement and are in collusion with the respondent-plaintiff. I am of view that the exceptional reasons contemplated by the Division Bench of this Court is one pertaining to non-filing of written statement and not an aspect touching the merits of the matter. It appears that the trial Court has also rejected the request of the petitioner to treat this reply to the application for temporary injunction as a written statement on the same ground, viz., that this request was made after two years of filing of the reply to the injunction application. Having regard to the circumstances of the case and the long period of two years which the petitioner allowed to lapse before attempting to file written statement, I find no infirmity in law. There is no error, jurisdictional or otherwise warranting interference by this Court.

5. In the circumstances, the petition is dismissed

without any order as to costs.

Sd/-

S.A. BOBDE, J.